

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 19 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

KERRY ATKINSON,

Plaintiff - Appellant

v.

METROPOLITAN LIFE INSURANCE
COMPANY; AT&T LONG TERM
DISABILITY PLAN FOR
MANAGEMENT; AT&T SHORT TERM
DISABILITY PLAN FOR
MANAGEMENT,

Defendants - Appellees

No. 06-16026

D.C. No. CV-04-02010-GEB

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, District Judge, Presiding

Submitted March 14, 2008^{**}
San Francisco, California

Before: NOONAN, McKEOWN, and FISHER, Circuit Judges

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Kerry Atkinson appeals the district court's grant of summary judgment in favor of Metropolitan Life Insurance Company and AT&T Long Term Disability Plan for Management Employees (collectively, "AT&T"). The court affirmed the denial of Atkinson's claim for disability benefits, which is governed by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.*

This court reviews the district court's grant of summary judgment *de novo*. *See Taft v. Equitable Life Assurance Soc'y*, 9 F.3d 1469, 1471 (9th Cir. 1993). The appeal presents two issues: (1) did the district court apply the correct standard of review in affirming AT&T's denial of Atkinson's claim; and (2) should the grant of summary judgment in favor of AT&T be affirmed?

We answer both questions in the affirmative. The district court correctly reviewed AT&T's denial of benefits for abuse of discretion. *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955 (9th Cir. 2006). Atkinson's argument that the court should have reviewed the denial *de novo* lacks merit as she has not shown that the administrator "engage[d] in wholesale and flagrant violations of the procedural requirements of ERISA." *Id.* at 971. Nor has Atkinson proven that a low level of deference under the abuse of discretion standard of review is proper because the structural conflict of interest at issue is accompanied by other nefarious factors. Accordingly, the district court correctly reviewed the denial of benefits for abuse

of discretion, under which the court may set aside the administrator's discretionary determination only when it is arbitrary and capricious. *Jordan v. Northrop Grumman Corp. Welfare Benefit Plan*, 370 F.3d 869, 875 (9th Cir. 2004).

It cannot be said that AT&T's denial of Atkinson's claim is arbitrary and capricious. Medical documents submitted by Atkinson indicate that her back pain, which began in 1994, had not become so severe as to preclude her from working at a sedentary job, which her job at AT&T was. Accordingly, the district court correctly granted summary judgment in favor of AT&T.

AFFIRMED.